

LIBRARY
SUPREME COURT, U.S.

*Ed. Hudson
Special Library*

COPY

No. 617

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952.

DISTRICT OF COLUMBIA, PETITIONER

V.

JOHN R. THOMPSON COMPANY, INC.

LEGISLATIVE HISTORY OF 1901 CODE FOR DISTRICT OF COLUMBIA

SUBMITTED BY WASHINGTON BOARD OF TRADE, AMICUS CURIAE

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 617

DISTRICT OF COLUMBIA, Petitioner

v.

JOHN R. THOMPSON COMPANY, INC.

LEGISLATIVE HISTORY OF 1901 CODE FOR DISTRICT OF COLUMBIA

SUBMITTED BY WASHINGTON BOARD OF TRADE, AMICUS CURIAE

This memorandum is being submitted to the Court pursuant to leave granted to the undersigned counsel at the conclusion of his argument on Friday, May 1, 1953.

The compiled statutes in force in the District of Columbia, compiled and distributed by order of the Supreme Court of the District of Columbia on June 2, 1894, in general term, as directed by Act of Congress of March 2, 1889, Chapter 392, contains copies of the Acts of the Legislative Assembly of 1872 and 1873 in question in this case. See Chapter 16, CRIMES AND OFFENSES, Pages 183-185.

The Eighth Report of the Washington Board of Trade (1898) contains letter of Judge Walter S. Cox transmitting the Code prepared by him to President Theodore Noyes of the Board of Trade. See bound volume in Public Library, in original pamphlet form with outside binding added. The cover page shows this Code of Law was prepared at the request of the Bar Association and the Board of Trade of Washington by Walter S. Cox. It contains

the best representatives of the intelligent sentiment of the people of the District.

Judge Cox's said letters appears in full in said report of the President of the Board (pp. 23, 24). The President's report contained, among others, the following statements:

This letter notes the completion of Judge Cox's formidable task. Arrangements have been made by the Board of Trade and the Bar Association jointly to print the proposed code in order that it may be examined and considered prior to its adoption by the Board and Bar Association, and the urgent request for its enactment into law by Congress.

IMPORTANCE OF CODIFICATION.

No other legislation to be brought before Congress at its approaching session is so important to the District's welfare as this. * * * this codification goes over the entire body of local law, lopping off what is obsolete or obsolescent * * *.

* * * Justice Cole and other judges at the Board Meeting of 1895 demonstrated that the District law was still a museum of antiquities. Representative Grosvenor at an Arlington meeting of the Board afterward dangled in our faces some statutory antediluvian monstrosity at that date still living and flourishing in the District, and pledged himself, at the proper time, to assist vigorously in relieving the District of these fossil statutes.

Washington Board of Trade, Ninth Report (November 1899), President Noyes reported progress on the Code, including the following:

Since the date of my last year's annual report,

in which was noted the completion of Judge Cox's task of codifying the laws of the District, and in which was discussed at length the importance and value of this work, substantial progress has been made toward the goal of the enactment of the code into law. First, the code, as framed by Judge Cox, was printed by the Board of Trade and the Bar Association in conjunction, and copies were distributed for careful and thorough consideration. The Legal Committee of the Board of Trade and an exceedingly able committee from the Bar Association undertook the study of the details of the proposed law. The Bar Association committee appointed numerous sub-committees of members of the association, each of which considered and reported upon a particular section or chapter of the code. So great was the interest felt by everyone in this public-spirited task that the courts of the District took a recess for several weeks in order that uninterrupted consideration might be given by bench and bar to the code. Finally the amended code was approved by the Bar Association committee and was submitted as a Senate bill shortly before adjournment for the session, in order that it might be printed for convenience of consideration. This bulky bill is now to receive its final touches, and the formal approval of the Bar Association and the Board of Trade. It will then be in condition to be pushed from the very opening of Congress, energetically and systematically, everybody cooperating, until it becomes a law.

(It may or may not be known to the Court that Mr. Theodore Noyes was a lawyer, who as a young man practiced law in South Dakota for several years before he was called back to Washington to take the position of editor of the Washington Star. He never lost the feel of being a lawyer and as such had the most patriotic interest in bringing about the codification of the laws of the District of Columbia.)

The Bill referred to by Mr. Noyes was Bill S. 5530, which was introduced by Senator McMillan, February 18, 1892, Cong. R.-Senate 2041.

The entry in the record is as follows:

Mr. McMillan introduced a Bill (S.5530) to establish a Code of Law for the District of Columbia; which was read twice by its title, and referred to the Committee on the District of Columbia.

That was in the 55th Congress, 3rd Session. The index for that session shows no other action taken on that Bill. There was no later session of that Congress. This Bill is the one referred to in the brief for the United States, Page 68.

The Bill which was passed by Congress and signed by the President, and became the Code of 1901, was H. R. 9835 of the 56th Congress, 1st Session.

This Bill was introduced by Mr. Jenkins on March 21, 1900, as shown by the following entry:

By Mr. Jenkins:

A Bill (H.R. 9835) to establish a Code of Law for the District of Columbia -- to the Committee on the District of Columbia.

Cong. R.-House, March 21, 1900, Page 3153.

The Bill was reported by Mr. Jenkins from the Committee on the District of Columbia, to the House, with amendment, accompanied

by Report No. 1017; which Bill and Report were referred to the House Calendar. Cong. R.-House, April 14, 1900, page 4205.

The Bill was called up in the House on April 30, 1900, briefly discussed, and the reading of the Bill by sections for amendment postponed to another day, id., 4859.

On May 28, 1900, the Bill was read. Evening sessions were ordered for the consideration of the Bill, extending from 8:00 to 10:30 P.M., id., Page 6178.

On the night of May 28, 1900, the Bill was read, Committee amendments and other amendments then offered were considered and acted upon. The Bill as amended was ordered to be engrossed and read a third time, which was done and the Bill was passed, id., Pages 6180-6182.

The Bill was received in the Senate May 31, 1900, read twice by its title, and referred to the Committee on the District of Columbia, id., Page 6265.

On December 15, 1900, Senator Pritchard reported the Bill, making the following statement:

I am directed by the Committee on the District of Columbia to whom was referred the Bill (H.R. 9835) to establish a Code of Law for the District of Columbia, to report it with amendments. I reserve the right to offer certain amendments to the Bill. (id., Page 333).

This oral statement of Senator Pritchard appears to have been the only Senate Report on the Bill.

On January 22, 1901, Senator Stewart endeavored to have the Bill read at night, but there was objection, id., Page 1287.

On January 29, 1901, Senator Stewart again endeavored to have the Bill read, but there was objection, id., Page 1607.

On February 13, 1901, the Senate held an evening session at which the Bill was read to the end of Chapter 41, when the Senate adjourned, id., 2366.

On February 14, 1901, at an evening session the reading of the Bill was completed, id., 2413.

February 16, 1901, Senator Fritchard endeavored to have the Bill read in full, but there was objection, id., 2501.

On February 28, 1901, Senator Fritchard again endeavored to get the Bill up, but there was objection, id., 3197.

March 2, 1901, the Bill was next in order and there being no objection the Senate as Committee of the Whole, resumed consideration of the Bill. Several amendments were added to the Bill, which provided for ten Justices of the Peace, certain matters of procedure, and insurance companies.

An amendment was added providing a fine of not more than \$100.00 or imprisonment of not more than six months, or both, for anyone obtaining lodging, food or accommodations at an inn, boarding house, or lodging house with intention to defraud and absconding without paying for the same.

The final amendment then made was the 8th exception to Sec. 1636.

The Bill was read a third time and passed.

On motion of Senator Wellington, the Bill was reconsidered and two other amendments, relating to marriage and divorce, were added, and the Bill was again read the third time and passed, id., 3496-7.

On March 2, 1901, the Bill, as passed by the Senate, was reported to the House, read by its title, the amendments were debated, especially the one making it a misdemeanor to fail to pay a bill at a boarding house incurred with intent of defrauding the boarding house keeper and then leaving without paying.

Chairman Babcock of the House Committee on the District of Columbia, during the debate, pointed out that the codification made some change in the existing laws, and said that it was not the work of a Special Committee of Congress; that the original draft of the Code was prepared by the Supreme Court of the District of Columbia; that one of the Judges of that Court was appointed for this work and was engaged upon it for several years; that it was then submitted to the Bar Association of the District and approved by them; and then it was submitted to the House and Senate for their action.

The Senate amendments were concurred in and the Bill was passed, id., Pages 3585-6; and on the same day the Bill was enrolled and signed by the President of the Senate, id., Page 3555. On the same day the enrolled Bill was signed by the Speaker of the House, id., Page 3603.

On March 3, 1901, the Bill was signed by the President, id., Page 3603.

The Code prepared, as stated by Chairman Babcock (supra) was submitted to the House of Representatives in its complete form, embracing both Part I and Part II. In the preface to it (vii) Judge Cox stated that he had considered the Acts of the Legislative Assembly of the District, during the years 1871, 1872 or 1873, as found in "Mr. Abert's valuable compilation". He also said:

I have carefully examined all of this law, and in the work now published I have treated every subject provided for by it, except such matters as were of a transitory character and such as may be called obsolete.

Judge Cox also said:

"The Code is divided into two parts. The first only is of immediate interest to our profession and litigants. * * * (Page viii)

In the formal report on the Bill to the House of Representatives made by Congressman Jenkins (H.R. No. 1017, 56th Congress, 1st Session, House Reports, Vol. 4), many amendments are set forth.

Judge Cox's preface to his work is quoted at length, and the report continued in the following language:

The first of the two parts referred to by Justice Cox included the general statutes, laws relating to public and private rights and remedies. The second part referred to the organization of the municipal corporation known as the District of Columbia and to municipal affairs generally.

The report records the work of the committees of lawyers who worked on the Code giving their names. The list included Senator Newlands of Nevada, Chief Justice R. R. Alvey of the

Court of Appeals of the District of Columbia and A. L. Britton whose firm of Britton and Gray was as well known in this Court as any other firm of lawyers in the United States (Page 4-5).

The report records the first introduction of the Code as Senate Bill 5530, 55th Congress, 3rd Session, and in that connection stated:

This action was taken with the approval also of the Bar Association at a special meeting called for the purpose, with the understanding at the time with the corresponding committee of the Board of Trade that after a final revision should have been completed the whole work should be submitted to the Board of Trade through its special committee.

The report then records that the Code so introduced in the Congress was gone over by committee of the Bar Association and three justices of the Supreme Court of the District of Columbia who spent six weeks on the work, and said:

This joint committee of the Bench and Bar also examined Albert's compilation of the statutes in force in the District of Columbia, the revised statutes of the District and the Acts of Congress enacted December 1873 - the date of the revised statutes - for the purpose of discovering whether any important omission had been made. (Page 5)

The report continued:

Like other Codes, this work deals only with those general and permanent statutes which affect the personal and property rights of the people at large and the procedure by which these rights are to be established and defended.

It should be noted that the Bill H.R. 9835 as passed contained a chapter entitled Crimes and Punishments in which section 837 covered innkeepers. It is noted in the debates that Representative Jenkins spent months on the bill.

In view of the entire history of the Code, there is no possibility that the subject of restaurants and the Acts of the Assembly of 1872 and 1873 were not intentionally excluded from the Code, nor that this subject was reserved to be later inserted in Part II, which never included it.

Respectfully submitted,

E. F. Colladay,
General Counsel
Washington Board of Trade
Attorney for
Amicus Curiae

D.C. Colladay,
of Counsel